

JUDGE CROTTY

09 CV 9350

NICOLETTI HORNIG & SWEENEY

Attorneys for Plaintiff

Nippon Express Co., Ltd.

Wall Street Plaza

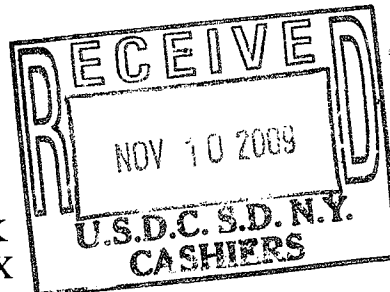
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New York, New York 10005

(212) 220-3830

Attorney: Samuel C. Coluzzi (SC-8975)

NH&S File No.: 15000035 FMM/SCC



U.S. DISTRICT COURT
S.D.N.Y.

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
NIPPON EXPRESS CO., LTD.

Case No.: 09 Civ. ()

Plaintiff,

-against-

COMPLAINT

ALL NIPPON AIRWAYS CO., LTD.,
CARGO CONNECTION LOGISTICS
CORP. and C.M. LOGISTICS, INC.

Defendants.
-----X

Plaintiff, Nippon Express Co., Ltd. ("NE"), by its attorneys, Nicoletti Hornig & Sweeney, alleges upon information and belief, as follows:

PARTIES

1. NE is a corporation duly organized corporation existing under and by virtue of the laws of Japan with a place of business located at 9-3, 1-Chome, Higashi-Shimbashi, Minato-Ku, Tokyo, Japan.

2. Defendant All Nippon Airways Co., Ltd. ("ANA"), is a corporation existing under and by virtue of the laws of Japan with a place of business located at 1251 Avenue of the Americas, #820, New York, New York 10020.

3. Defendant Cargo Connection Logistics Corp. ("CC") is a corporation existing under and by virtue of one of the states of the United States with an office and place of business located at 600 Bayview Avenue, Inwood, New York 11096.

4. Defendant C.M. Logistics, Inc. ("CM") is a corporation existing under and by virtue of the laws of one of the states of the United States with a place of business located at P.O. Box 248387, Columbus, Ohio 43224.

5. At all times relevant hereto defendant ANA was engaged in the transportation of cargo for hire as an air carrier, trucker, broker, freight forwarder, or otherwise.

6. At all times relevant hereto defendant CM was engaged in the transportation of cargo for hire as an air carrier, trucker, broker, freight forwarder, or otherwise.

7. At all times relevant hereto defendant CC was engaged in the transportation of cargo for hire as an air carrier, trucker, broker, freight forwarder, or otherwise.

JURISDICTION

8. Jurisdiction and venue over the parties and subject matter is appropriate under 28 U.S.C. §1331 as this matter is governed by the Convention for the Unification of Certain Rules Relating to International Transportation by Air, 49 Stat. 3000, T.S. No. 876 (1934) (reprinted in note following 49 U.S.C. §40105) (commonly known, and referred to herein, as the "Warsaw Convention") or the Convention for the Unification of Certain Rules for International Carriage by Air, May 28, 1999 (2003), Treaty Doc. No. 106-45, at 27, 2242 U.N.T.S. 350, reprinted in 1999 WL 33292734 (2000) (commonly known, and referred to herein, as the "Montreal Convention"). These conventions will be referred to herein collectively as Warsaw/Montreal.

9. The Court has federal question subject matter jurisdiction pursuant to 49 U.S.C. §14706 (the "Carmack Amendment" to the Interstate Commerce Act) as to the defendants.

THE LOSS

10. On or about the dates and at the port of shipment stated in Schedules "A", "B", and "C" attached hereto and by this reference made a part hereof, there was delivered to the defendants in good order and condition, the shipments described in Schedules "A", "B", and "C", which defendants received, accepted and agreed to transport for certain consideration to the destinations stated in Schedules "A", "B", and "C."

11. Thereafter, defendants delivered the shipments, however, described in Schedules "A", "B", and "C" short, missing and/or damaged.

12. By reason of the premises, the defendants breached, failed and violated their duties and obligations as air carrier, common carrier, trucker, bailee, warehousemen, broker and were otherwise at fault.

13. Plaintiff was the consignee, owner, owner in fact, or contractually and/or legally liable and/or responsible for the shipments described in Schedules "A", "B", and "C", and brings this action on its own behalf and as agent for the interest of all parties who may be or become interested in the said shipments, as their respective interests may ultimately appear, and plaintiff is entitled to maintain this action.

14. Plaintiff has duly performed all duties and obligations on its part to be performed.

15. By reason of the premises, plaintiff has sustained damages as nearly as same can now be estimated, no part of which has been paid, in the total amount of \$593,952.94 for the

damages sustained to the cargo described in Schedules "A", "B", and "C" as a result of the fault of defendants as described herein in the amount of \$593,952.94.

FIRST CAUSE OF ACTION

16. At all material times, defendants were charged with the exclusive care, custody and control over the cargo.

17. Defendants, as bailee of the goods and/or as carrier, owed a duty to safely and securely transport the cargo as agreed and to turn over the cargo to its proper recipient in the same good order and condition as originally received, at the conclusion of transit.

18. Defendants did not deliver the goods in the same good order and condition as required and breached its duty as bailee and/or as carrier.

19. By reason of the foregoing, plaintiff was damaged in an amount in excess of \$593,952.94 together with interest and the costs of this action.

SECOND CAUSE OF ACTION

20. Plaintiff repeats and realleges each and every allegation contained in paragraphs "1" through "19" as though more fully set forth herein at length.

21. The loss and damage to the cargo which occurred while in defendants care, custody and control is a breach of defendants duties and obligations under the Warsaw/Montreal Conventions in that defendants are air carriers who accepted the cargo in good order and condition but failed to deliver the same in good order and condition at destination.

22. By reason of the foregoing, plaintiff was damaged in an amount in excess of \$593,952.94 together with interest and the costs of this action.

THIRD CAUSE OF ACTION

23. Plaintiff repeats and realleges each and every allegation contained in paragraphs "1" through "22" as though more fully set forth herein at length.

24. The loss and damage to the cargo which occurred while in defendants care, custody and control was the result of defendants gross negligence.

25. By reason of the foregoing, plaintiff was damaged in an amount in excess of \$593,952.94 together with interest and the costs of this action.

AS AND FOR A FOURTH CAUSE OF ACTION
AS AND AGAINST DEFENDANTS

26. Plaintiff repeats and realleges each and every allegation contained in paragraphs "1" through "25" as though more fully set forth herein at length.

27. Defendants received the cargo in good order and condition, which defendants received, accepted and agreed to transport for certain consideration to Miami.

28. On or about November 12, 2007, a motor vehicle accident occurred, wherein the container and its contents containing the shipment was caused to be damaged.

29. Defendants failed to make delivery of said shipments in like good order and condition as when shipped, delivered to and received by them, but on the contrary, lost or permitted the shipment to be damaged and impaired in value, all in violation of defendants obligations and duties as common carriers of merchandise by land for hire.

30. By reason of the premises, the defendants breached their obligations to transport the goods, and any obligations otherwise provided by the Carmack Amendment or otherwise.

31. The Plaintiff brings this action on its own behalf and as agent and/or trustee on behalf of and for the interest of all parties who may be or become interested in the shipment, as

their respective interests may ultimately appear, and the Plaintiff is entitled to maintain this action.

32. Plaintiff has performed all conditions on their part to be performed.


33. By reason of the premises, the plaintiff has suffered damages in the amount of \$593,952.94, as near as it can now be estimated.

WHEREFORE, plaintiff demands judgment on the First, Second, Third, and Fourth Causes of Action against defendants All Nippon Airways Co., Ltd., Cargo Connection Logistics Corp. and C.M. Logistics, Inc. for \$593,952.94 with interest and cost of this suit.

Dated: New York, New York
November 10, 2009

Yours, etc.,

NICOLETTI HORNIG & SWEENEY
Attorneys for Plaintiff
Nippon Express Co., Ltd.

By: 
Samuel C. Coluzzi (SC-8975)
Wall Street Plaza, 88 Pine Street, 7th Floor
New York, New York 10005
(212) 220-3830
NH&S File No.: 15000035 FMM/SCC

SCHEDULE A

HAWB: NEC 2066 4044

MAWB: ANA 205-9353-0850

To: Miami via Dulles Airport, Washington, D.C.

From: Tokyo, Japan

Damage/Nature of Claim: Physical Damage/Shortage/Non-Delivery

Date of Loss: November 12, 2007

Cargo: Electronics/Goods

Amount: \$275,412.87

NH&S File No.: 15000035 FMM/SCC

See Annexed Ex. "1"

EXHIBIT “1”

* N E C 2 0 6 6 4 0 4 4 A I R M A I L T O F (C O N T A I N E R) T O E X P O R T N E C 2 0 6 6 4 0 4 4

Shipper's Name and Address CANON INC. TOKYO, JAPAN.		Shipper's Account Number 0001-0001		Not negotiable Air Waybill	
Consignee's Name and Address CANON LATIN AMERICA INC. 703 WATERFORD WAY SUITE 400, MIAMI, FL 33126		Consignee's Account Number 0001-0001		Remarks 9-3, 1-CHOME, HIGASHI-SHIMBASHI MINATO-KU, TOKYO, JAPAN.	
Origin CANON KA (135-OTA) NIPPON EXPRESS CO., LTD.		Destination MIAMI		Freight PREPAID	
M: 205-9353 0850/SB NSL3/BBP-MIA		Airport of Departure (Add. of First Carrier) and Requested Routing NRT-IAD-MIA		Amount of Insurance 8,600,000.00	
To MIAMI		By First Carrier Routing and Destination		Currency JPY	
Handling Information NOTIFY: 1-EXPEDITORS INTL OF WASHINGTON INC. 10205 NW 49TH STREET SUITES 107-111 MIAMI, FL 33172 ATTN: IMPORT MGR TEL 305-592-9410 2-CANON LATIN AMERICA, INC., 703 WATERFORD WAY SUITE 400 MIAMI, FL 33126 TEL 305-260-7435		Amount of Insurance 8,600,000.00		Discarded Value for Customs 8,600,000.00	
No. of Pieces 58	Gross Weight 2252.5	Net Weight 2252.5	Volume 2.432	Charge 1,080	Remarks BATTERY PACK FOR CAMERA ORIGIN: JAPAN-CHINA 246 SLAC INVOICE NO: TEL-07700450
Prepaid 2,432,700		Weight Charge 1,734,425		Other Charges	
Valuation Charge		Tax		Shipper certifies that the particulars on the face hereof are correct and agree to the CONDITIONS ON THE REVERSE HEREOF.	
Total other Charges Due Agent		Total other Charges Due Carrier		Signature of Shipper or his Agent	
Total Prepaid 698,275		Total Collect		Carrier certifies that the goods described hereon are accepted for carriage subject to THE CONDITION OF CONTRACT ON THE REVERSE HEREOF, the goods then being in apparent good order and condition except as noted hereon.	
For Carriage Use only		For Charges at Destination		11 NOV 2007 TOKYO, JAPAN	
Total Collect Charge		Total Collect Charge		Signature of Issuing Office	

ORIGINAL 3-- (FOR SHIPPER)

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SCHEDULE B

HAWB: NEC 2069 0331

MAWB: ANA 205-9533-2272

To: Miami, Florida via Dulles Airport, Washington, D.C.

From: Tokyo, Japan

Damage/Nature of Claim: Physical Damage/Shortage/Non-Delivery

Date of Loss: November 12, 2007

Cargo: Electronics/Goods

Amount: \$84,013.17

NH&S File No.: 15000035 FMM/SCC

See Annexed Ex. "2"

EXHIBIT “2”

* NEC 2069 0331 (CAN) NEC 2069 0331

Shipper's Name and Address CANON INC. TOKYO, JAPAN.		Shipper's Account Number C001-C0001		Not negotiable Air Waybill	
Consignee's Name and Address CANON LATIN AMERICA INC. 703 WATERFORD WAY SUITE 400, MIAMI FL 33126		Consignee's Account Number MIA2		Issued by NIPPON EXPRESS 9-3,1-CHOME,HIGASHI-SHINBASHI MINATO-KU,TOKYO,JAPAN.	
Issuing Carrier's Name and City CANON KA (135-035) NIPPON EXPRESS CO.,LTD.		Copies 1, 2 and 3 of this Air Waybill are original and have the same validity. It is agreed that the goods described herein are accepted in apparent good order and condition (except as noted) for carriage SUBJECT TO THE CONDITIONS OF CONTRACT ON THE REVERSE HEREOF. ALL GOODS MAY BE CARRIED BY ANY OTHER MEANS INCLUDING ROAD OR ANY OTHER CARRIER UNLESS SPECIFIC CONTRARY INSTRUCTIONS ARE GIVEN HEREON BY THE SHIPPER, AND SHIPPER AGREES THAT THE SHIPMENT MAY BE CARRIED VIA INTERMEDIATE STOPPING PLACES WHICH THE CARRIER DEEMS APPROPRIATE. THE SHIPPER'S ATTENTION IS DRAWN TO THE NOTICE CONCERNING CARRIER'S LIMITATION OF LIABILITY. Shipper may increase such limitation of liability by declaring a higher value for carriage and paying a supplemental charge if required.			
M:205-9353 2272/SB:NSL3/BBP:MIA		Accounting Information FREIGHT : PREPAID			
Airport of Departure (Addr. of First Carrier) and Requested Routing NRT-IAD-MIA		D= 5.1 (8.038000M3)			
To	By First Carrier	Routing and Destination	to	by	to
MIAMI					
Airport of Destination MIAMI		Requested Flight/Date NH002/TUEH8103/11		Amount of Insurance	
Handling Information NOTIFY:1)EXPEDITORS INTL. OF WASHINGTON INC. 10205 N.W. 19TH STREET SUITES 107-114 MIAMI,FL 33172 ATTN:IMPORT MGR. TEL.305-592-9410 2)CANON LATIN AMERICA, INC., 703 WATERFORD WAY SUITE 400 MIAMI, FL 33126. ATTN:IMPORT & EXPORT DPT. PHONE:(305)260-7435		Declared Value for Carriage N.V.D			
No. of Pieces RCP	Gross Weight	Rate Class	Commodity Item No.	Chargeable Weight	Rate
100	1458.0K	Q		1458.0	1,080
			Charge		
			1,574,640		
Nature and Quantity of Goods (Unit, Dimensions or Volume) CANON LENS EF AND ETC. 100 SLAC.					
INVOICE NO: CL-07/00453 ORIGIN : JAPAN					
Prepaid			Weight Charge		
1,574,640			Collect		
Valuation Charge			Other Charges		
Tax			PLACE OF RECEIPT: NRT		
Total other Charges Due Agent			Shipper certifies that the particulars on the face hereof are correct and agrees THE CONDITIONS ON THE REVERSE HEREOF.		
-1,122,660			Signature of Shipper or his Agent		
Total other Charges Due Carrier			Carrier certifies that the goods described hereon are accepted for carriage subject to THE CONDITION OF CONTRACT ON THE REVERSE HEREOF, the goods then being in apparent good order and condition except as noted hereon.		
			11.NOV.2007 TOKYO, JAPAN.		
Total Prepaid			Executed on (date)		
451,980			at (place)		
Currency Conversion Rates			Signature of Issuing Carrier		
CG Charges in Dest. Currency			Total Collect Charges		
For Carriers Use only at Destination			Charges at Destination		

TOPPAN FORMS CO., LTD. 07/06 JAEA JAPAN AIRCARGO FORWARDERS ASSOCIATION

ORIGINAL 3- (FOR SHIPPER)

1 MNKY 00

PRINTED IN JAPAN

SCHEDULE C

HAWB: NEC 2066 4011 / NEC 2066 4033

MAWB: ANA 205-935-0774

To: Miami, Florida via Dulles Airport, Washington, D.C.

From: Tokyo, Japan

Damage/Nature of Claim: Physical Damage/Shortage/Non-Delivery

Date of Loss: November 12, 2007

Cargo: Electronics/Goods

Amount: \$234,526.90

NH&S File No.: 15000035 FMM/SCC

See Annexed Ex. "3"

EXHIBIT “3”

205 93550774

TOPPAN FORMS CO., LTD. 03-4500-017 00
 International Air Transport Association
 OASIS Japan

PRINTED IN JAPAN

NEC 2066 4011 (CAN) NEC 2066 4011

Shipper's Name and Address CANON INC. TOKYO, JAPAN.		Shipper's Account Number C001-C0001		Not negotiable Air Waybill	
Consignee's Name and Address CANON LATIN AMERICA INC. 703 WATERFORD WAY SUITE 400, MIAMI FL 33126		Consignee's Account Number MIA2		Issued by NIPPON EXPRESS 9-3,1-CHOME,HIGASHI-SHIMBASHI MINATO-KU,TOKYO,JAPAN.	
Issuing Carrier's Name and City CANON KA (135-095) NIPPON EXPRESS CO.,LTD.		M:205-9355 0774/SB:P1CH/BBP:MIA		Copies 1, 2 and 3 of this Air Waybill are originals and have the same validity It is agreed that the goods described herein are accepted in apparent good order and condition (except as noted) for carriage SUBJECT TO THE CONDITIONS OF CONTRACT ON THE REVERSE HEREOF. ALL GOODS MAY BE CARRIED BY ANY OTHER MEANS INCLUDING ROAD OR ANY OTHER CARRIER UNLESS SPECIFIC CONTRARY INSTRUCTIONS ARE GIVEN HEREOF BY THE SHIPPER, AND SHIPPER AGREES THAT THE SHIPMENT MAY BE CARRIED VIA INTERMEDIATE STOPPING PLACES WHICH THE CARRIER DEEMS APPROPRIATE. THE SHIPPER'S ATTENTION IS DRAWN TO THE NOTICE CONCERNING CARRIER'S LIMITATION OF LIABILITY. Shipper may increase such limitation of liability by declaring a higher value for carriage and paying a supplemental charge if required.	
Airport of Departure (Addr. of First Carrier) and Requested Routing MIA-TAD-MIA		Accounting Information FREIGHT : PREPAID		D= 1.6 (.013000M3)	
To	By First Carrier	Routing and Destination	to	by	to
MIAMI					
Airport of Destination		Requested Flight/Date		Amount of Insurance	
MIAMI		NH0002/11NOV03/11		If shipper requests insurance in accordance with the conditions thereof, indicate amount to be insured in figures in box marked "Amount of Insurance".	
Handling Information 1) EXPEDITORS INTL. OF WASHINGTON INC. 10205 N.W. 19TH STREET SUITES 107-114 MIAMI, FL 33172 ATTN: IMPORT MGR. TEL: 305-592-9410 2) CANON LATIN AMERICA, INC., 703 WATERFORD WAY SUITE 400 MIAMI, FL 33126, ATTN: IMPORT & EXPORT DPT. PHONE: (305) 260-7425					
No. of Pieces (G.P.)	Gross Weight (kg)	Rate Class	Commodity Item No.	Chargeable Weight	Rate
1	0.8K	M		2.5	
Total				9.400	
Nature and Quantity of Goods (incl. Dimensions or Volume)				ZOOM LENS	
1 SLAC.					
Prepaid 9,400				Other Charges	
Valuation Charge					
Tax					
Total other Charges Due Agent					
Total other Charges Due Carrier					
Total Prepaid 9,400				Total Collect	
Currency Conversion Rates				CC Charges in Dest. Currency	
For Carriers Use only at Destination				Charges at Destination	
				Total Collect Charges	
Signature of Shipper or his Agent					
Carrier certifies that the goods described herein are accepted for carriage subject to THE CONDITION OF CONTRACT ON THE REVERSE HEREOF, the goods then being in apparent good order and condition except as noted hereon. 9.NOV.2007 TOKYO, JAPAN.					
Executed on (date) at (place) Signature of issuing Carrier					
NEC 2066 4011					

TOPPAN FORMS CO., LTD. 08/08 JAFSA JAPAN AIRCARGO FORWARDERS ASSOCIATION

COPY.

-SZCNE 00 - PRINTED IN JAPAN.

* NEC 2066 4033		2066 4033	
Shipper's Name and Address CANON INC. TOKYO, JAPAN.		Shipper's Account Number COOL 60001	
Consignee's Name and Address CANON LATIN AMERICA INC. 703 WATERFORD WAY SUITE 400, MIAMI, FL 33126		Not responsible for cargo 9-3-1-CHOME, HIGASHI-SHIMBASHI MINATO-KU, TOKYO, JAPAN.	
Handling Information CANON KA (135-095) NIPPON EXPRESS CO., LTD. M: 205-9355 0774/SB: FICN/BBP-MLA		Accompanying Information PREPAID D=663 5915000M3	
Airport of Departure (Addr. of First Carrier) and Requested Routing NRT-IAD-MIA		Declared Value for Customs JPY 1,428,300	
To By First Carrier Routing and Destination MIAMI		Amount of Insurance 1,428,300	
Handling Information NOTIFY: 1) EXPEDITORS INTL OF WASHINGTON INC. 10205 N.W. 19TH STREET SUITES 207-114 MIAMI, FL 33172 ATTN: IMPORT MGR. TEL: 305-592-9410 2) CANON LATIN AMERICA, INC., 703 WATERFORD WAY SUITE 400, MIAMI, FL 33126 TEL: (305) 260-7435		DECLARATION OF CARRIER DECLARED VALUE FOR CARRIER'S LIABILITY 1,428,300	
No. of Pieces 118		Gross Weight 1322.260	
Commodity Item No. 118		Weight 1322.260	
Charge 1,080		BATTERY GRIP FOR CAMERA	
Prepaid 1,428,300		ORIGIN: JAPAN CHINA	
Valuation Charge 931,040		INVOICE NO: CL-07/00449	
Total other Charges Due Agent 931,040		PLACE OF RECEIPT: FUK	
Total other Charges Due Carrier 497,260		DECLARATION OF CARRIER DECLARED VALUE FOR CARRIER'S LIABILITY 1,428,300	
Total Prepaid 497,260		Signature of Shipper or His Agent 11 NOV 2007 TOKYO, JAPAN	
Carrier certifies that the goods described herein are accepted for carriage subject to THE CONDITION OF CONTRACT ON THE REVERSE HEREOF, the goods then being in apparent good order and condition except as noted hereon.		Signature of Issuing Carrier	
Executed on (date) 11 NOV 2007		at (place) TOKYO, JAPAN	
Total Collect Charges 497,260		Signature of Shipper or His Agent	
Total Collect Charges 497,260		Signature of Shipper or His Agent	

ORIGINAL 3- (FOR SHIPPER)

67CNR 00

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